

**INTEGRITY PACT**

**between**

**MINISTRY OF [.....] OF REPUBLIC OF AZERBAIJAN**

**and**

**[.....] COMPANY**

**and**

**TRANSPARENCY AZERBAIJAN**

**Baku, Azerbaijan**

**[Date]**

## INTEGRITY PACT

This agreement is entered into by

\_\_\_\_\_ herein called “the Principal “  
and

\_\_\_\_\_ herein called “the Contractor”

and -----herein called “the Monitor”

- 1) Ministry of [.....] of the Republic of Azerbaijan, duly registered under the laws of the Republic of Azerbaijan and acting in accordance with its Statutes, of legal address [.....], represented by Minister [.....] (hereinafter “the Principal”) and
- 2) Company [.....] of the Republic of Azerbaijan, duly registered under the laws of the Republic of Azerbaijan and acting in accordance with its Statutes, of legal address[.....], represented by [.....] (hereinafter “the Contractor”) and
- 3) Transparency Azerbaijan Non-governmental Organization [.....] of the Republic of Azerbaijan, duly registered under the laws of the Republic of Azerbaijan and acting in accordance with its Statutes, of legal address [.....], represented by [.....], (hereinafter “the Monitor”)

(All the parties referred to above will be hereinafter referred to as “Parties” altogether, or a Party separately).

## PREAMBLE AND GOAL

The Principal aims to conduct [*insert the name of the project*] the project (hereinafter “the Project”) with the estimated total contract value of [*insert the estimated contract value*] AZN, pursuant to the laws of the Republic of Azerbaijan, by means of [*state the method of procurement*] a method of procurement;

The Principal attaches great importance to an efficient use of resources and compliance with principles and rules of establishing a fair, transparent and equal competition environment in relation to the Contractors, pursuant to all the respective laws in force.

In view of the aforesaid, the Principal has appointed an independent outside Monitor within the framework of the Trilateral Integrity Pact in order to provide for public oversight of the foregoing principles in the tender process until the end of the project.

The Trilateral Integrity Pact is signed by the Principal (the state entity), the Contractor (*insert the name of the firm*) and the Monitor; obligations and rights of the Parties and other conditions are laid out in this Pact.

An essential element of the Integrity Pact process is the involvement of an independent Monitor who will oversee the fulfilment of the principles and obligations in the Integrity Pact

The purpose of this agreement is to establish the rights, duties and capacities of the Monitor in performing his monitoring role in regard to Project X, and the rights and duties of the Principal in enabling the Monitor to perform his role adequately and independently.

## **ARTICLE 1. OBLIGATIONS AND RIGHTS OF THE CONTRACTOR**

### **1.1. Obligations of the Principal**

The Principal commits itself to taking all measures necessary to prevent corruption and to observe the following principles:

**1.1.1.** No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of, a contract demand, accept a promise for or accept, for him/herself or a third person, any material or immaterial benefit to which he/she is not legally entitled

**1.1.2.** The Principal will, during the tender process, treat all Bidders alike, in compliance with the relevant provisions of the State Procurement Law dated 27/12/2001. The Principal will in particular, before and during the tender process, provide to all Bidders the same information and will not provide to any Bidder confidential information through which the Bidder could obtain an advantage in relation to the tender process or the contract execution

### **1.2. The rights of the Principal**

The Principal has the following rights in order to discharge its obligations:

**1.2.1.** The Principal shall debar any Contractor engaging in fraud with the aim of influencing the decision-making on procedures of procurement pursuant to Article 12 of the law "On public procurements".

**1.2.2** If the Principal obtains information on the conduct of any of the Contractors which constitutes a criminal offence under the "The Law on Combat against Corruption of the Republic of Azerbaijan" dated 13.01.2004 and relevant sections of the Articles on corruption of the criminal legislation of the Republic of Azerbaijan, or if there should be a concrete suspicion in this regard, the Principal will inform the State Prosecutor's Office and in addition can initiate disciplinary or civil sanctions pursuant to the legislation.

**1.2.3** The Principal will have the right exclude from the process any prejudiced persons, in accordance with the provisions of Article 6 of this Contract.

## **ARTICLE 2. OBLIGATIONS OF THE CONTRACTOR**

**2.1.** The Contractor commits himself to take all measures necessary to prevent corruption. He commits himself to observing the following principles during his participation in the tender process and during the contract execution:

**2.1.1.** Contractor will not offer, promise or give to the Principal, to any of the Principal's employees involved in the tender process or the execution of the contract, or to any third person any material or immaterial benefit to which he/she is not legally entitled, in order to obtain in exchange an advantage during the tender process or the execution of the contract.

**2.1.2.** The Contractor will not enter with other Bidders into any illegal agreement, which would constitute a violation of the relevant provisions of the Law on Public procurement of the Republic of Azerbaijan. This applies in particular to agreements regarding prices, price components, prohibited price recommendations, the contracts pertaining to participation in recommendations or agreements concerning the submission or non-submission of bids, or similar conduct.

**2.1.3.** The Contractor will not commit any criminal offence against the respective provisions of Criminal Code of the Republic of Azerbaijan and the Law on Unfair Competition of the Republic of Azerbaijan dated 12.06.1996. Contractor will not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained on discs or other data carriers.

**2.1.4.** Contractor will, when presenting his bid, disclose any payments he has made, is committed to making or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

**2.2.** Contractor will not instigate third persons to commit offences, or be an accessory to such offences.

### **ARTICLE 3. OBLIGATIONS AND RIGHTS OF THE MONITOR**

#### **3.1. Obligations of the Monitor**

**3.1.1** The Monitor will observe the contracting processes taking place within Project X and commits himself to checking and screening those contracting processes to ensure they have taken place with full transparency and accountability and in fulfilment of the obligations agreed by the Principal and the Bidders in the Integrity Pact signed in each contracting process.

**3.1.2.** The Monitor will review and comment on all bidding documents for the contracting processes he oversees and will make non-binding recommendations to improve them or the process undertake.

**3.1.3** The Monitor commits to handling as confidential all legally protected proprietary information given to him by the Principal, any of its officials, the Bidders or any of their employees in any form. This also includes information the Monitor has obtained through his participation in meetings.

**3.1.4** The Monitor explicitly states he is not currently in a situation of conflict of interest directly or through near relatives, and commits to disclose to the Principal and the NGO any possible situation which could be perceived as a conflict of interest that could arise in the future. The Monitor also commits not to engage in any contractual or business relation with any of the bidders participating in the contracting processes he has overseen, for a period of at least **XX** years after the termination of the project.

**3.1.5** With the support of the Principal and the NGO, the Monitor will conduct workshops, training sessions and all necessary activities to inform potential bidders and officials working for the Principal and involved in the contracting processes about the Integrity Pact, how it operates and the need for transparency and accountability in those processes, and how these should be ensured.

**3.1.6** The Monitor will prepare a written report about his activities and his findings every XX months and will provide it to the contact point designated by the Principal. However, if in performing his duties the Monitor finds situations or circumstances that are time-sensitive, or need to be further examined or be put to the Principal promptly, he will report them outside these regular reporting times to the Principal. The Principal will make these reports available to the public within the terms of this agreement. Within three months of completion of the project, the Monitor will prepare a final report which will also be made publicly available.

## **3.2. Rights of the Monitor**

The Monitor has the following rights that enable to fulfil the obligations due.

**3.2.1.** The Monitor will observe and review the bid evaluation and the award decision and will be able to pose questions or request clarification when necessary.

**3.2.2** The Monitor will have unrestricted access to all documents and information and formal and informal meetings related to Project X. The Principal is committed to instructing all of its officials and employees of this and to ensuring full compliance with this requirement. The Principal will also in a timely fashion inform the Monitor whenever meetings related to Project X will take place and enable the participation of the Monitor.

**3.2.3** The Monitor performs his tasks and duties independently. The Principal therefore cannot and will not in any way influence him in his duties or determine/change the contents of his reports. The Monitor is not subject to any instructions from the Principal, the Bidders or any of their management or employees.

**3.2.4** The Monitor will receive complaints, whether anonymous or not, regarding the correct fulfilment of the obligations of the Integrity Pact by any of the Parties and will initiate further action when appropriate and according with the terms of this agreement. To enable this he could establish an anonymous mechanism for people to file complaints.

**3.2.5** In case of indications of corruption at any stage of the contracting processes overseen by the Monitor, he will inform the Principal. The Principal in this case should react to clarify, correct or investigate the matter further. If there is no reaction by the Principal or if its reaction was not satisfactory, the Monitor will inform the prosecution authorities when he considers appropriate. The Monitor's reports should include both the findings and the indications and the action undertaken by the Principal to clarify, correct or further investigate the matter. The publication of those reports will be made ensuring that should further investigation be needed, it is not compromised.

**3.2.6** If occurrences of corruption have been identified by the Monitor, he is committed to report them to the control and prosecution authorities independently of whether the Principal reported those occurrences to those authorities or not.

**3.2.7** The Monitor will promote and participate in public hearings related to the project, whether organised by the Principal or the Contractor.

**3.2.8** Should the Monitor encounter restrictions to accessing relevant information, or should he find that there are not proper conditions in terms of sufficient transparency and accountability for him to perform his job adequately, he will be able to withdraw

unilaterally from his role in the project. In this case he must report in detail to the Principal the concrete reasons why he believes this is the case. In case of withdrawal the Principal will cover the costs incurred by the Monitor according to this agreement, up to the moment of withdrawal.

#### **ARTICLE 4. DISQUALIFICATION FROM THE TENDER PROCESS AND EXCLUSION FROM FUTURE CONTRACTS**

**4.1.** If the Bidder, before contract award, has committed a serious transgression through a violation of Article 2 or in any other form such as to put his reliability as Bidder into question, the Principal is entitled to disqualify the Bidder from the tender process or to terminate the contract, if already signed, for a 'significant reason'.

**4.2.** If the Contractor, after the contract has been awarded to him, has committed a serious transgression through a violation of § 2 or in any other form such as to put his reliability as Bidder into question, the Principal is entitled to give notice of cancellation for a 'significant reason'.

**4.3.** If the Contractor has committed a serious transgression through a violation of § 2 such as to put his reliability into question, the Principal is also entitled to exclude the Contractor from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression (or criminal conduct). The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of damage. The exclusion will be imposed for a minimum of six months and a maximum of three years.

**4.4.** If the Contractor can prove that he has restored the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely.

**4.5.** A transgression in terms of the Nr.1-3 above is considered to have occurred if, in light of all evidence, no reasonable doubt is possible.

#### **ARTICLE 5. COMPENSATION FOR DAMAGE**

**5.1.** If the Principal has disqualified the Bidder from the tender process prior to the award according to Article 3, the Principal is entitled to demand from the Bidder liquidated damages equivalent to three per cent of the value of the offer (without options).

**5.2.** If the Principal has terminated the contract according to Article 3, or if the Principal is entitled to terminate the contract according to Article 3, the Principal is entitled to demand from the Contractor liquidated damages equivalent to three percent of the contract value.

**5.3.** If the Contractor can prove that the exclusion of the Bidder from the tender process or the termination of the contract after the contract award has caused no damage or less damage than the amount of the liquidated damages, the Contractor must compensate for the damage only to the value of the amount proven.

**5.4.** If the Principal can prove that the value of the damage caused by the disqualification of the Bidder before contract award or the termination of the contract

after contract award is higher than the amount of the liquidated damages, it is entitled to claim compensation for the higher amount of damages.

## **Article 6. PREVIOUS TRANSGRESSIONS**

**6.1** The Bidder declares that no severe previous transgressions occurred in the last three years that could justify his exclusion from the tender process.

**6.2.** If the Bidder makes incorrect statements on this subject, he can be disqualified from the tender process, or the contract, if already awarded, can be terminated for a 'significant reason'.

## **Article 7. EQUAL TREATMENT OF ALL BIDDERS/CONTRACTORS/SUB-CONTRACTORS**

**7.1.** The Bidder/Contractor undertakes to demand from all Sub-contractors a commitment consistent with this integrity pact and to submit it to the Principal before contract signing or, at the latest, before the Principal approves the sub-contracting.

**7.2.** The Principal will enter into an agreement with the same conditions as this one with all Bidders, Contractors and Sub-contractors.

**7.3.** The Principal will disqualify from the tender process all bidders who do not sign this agreement or who violate its provisions.

## **Article 8.**

### **CRIMINAL CHARGES AGAINST VIOLATING BIDDERS/CONTRACTORS/SUB-CONTRACTORS**

**8.1.** If the Principal obtains knowledge of conduct by a Bidder, Contractor or Sub-contractor, or by an employee of a Bidder, Contractor or Sub-contractor, which constitutes a corruption-related crime, or if the Principal has a concrete suspicion in this regard, the Principal will inform the Chief Anti-Corruption under Prosecutor General and other respective institutions.

## **Article 9. CONTRACT DURATION**

**9.1.** This agreement begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the respective contract, and for all other Bidders 12 months after the contract has been awarded.

## **Article 10. OTHER PROVISIONS**

**10.1.** This agreement is subject to substantive law of the Republic of Azerbaijan

**10.2.** Changes and supplements, to the given Pact, will be signed by authorized persons of the Parties

**10.3.** If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

**10.4.** Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement closest to their original intentions.

10.5. The given Pact was compiled in Azerbaijani, in 3 (three) original copies, (1) one per each Party and was signed. Each of the three copies is of equal legal force.

10.6. All disputes arising out of or in connection with the given Pact shall be settled by mutual agreement between the Parties. If the Parties fail to reach an agreement, disputes shall be settled in the court in accordance with the existing laws of the Republic of Azerbaijan.

Ministry of ... of Azerbaijan Republic

Mr. Minister.....

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M.Y.

..... LLC

Director.....

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M.Y.

“Transparency Azerbaijan”, a non-governmental organization

Director .....

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M.Y.

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